



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 30, 2005

Mr. George A. Staples  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2005-07942

Dear Mr. Staples:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 231214.

The City of North Richland Hills (the "city"), which you represent, received a request for mileage records of certain city council members and the mayor. You state that the requested information does not exist. We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 452 at 3 (1986). Furthermore, you claim that the submitted information is not maintained by the city and is not subject to the Act. We have considered your claims and reviewed the submitted representative sample of information.<sup>1</sup>

The city argues that the submitted mileage record is not public information subject to the Act. See Gov't Code § 552.021 (Act is only applicable to "public information").

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.002 of the Act defines public information as “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” You provide us with a copy of the city council policy on car allowances and reimbursements. We understand that under section F of the policy, in order to receive a car allowance, the mayor and council members are required to certify that they have traveled at least as much as the base mileage requirement for the specified month. However, section I allows individuals to submit a log of actual business miles driven if they choose to receive a reimbursement instead of an allowance. You indicate that the subjects of this request chose to receive car allowances and not reimbursements. Therefore, the submitted mileage log is not required by city policy and is not maintained by the city as official business. You also state that the submitted mileage log may have been kept “for federal tax purposes, but this is not a city requirement.” We understand that the submitted mileage log is the personal record of a particular councilperson and, therefore, the city has no right of access to, and is not in possession of, the requested information.

Based on these representations and our review of the submitted information, we find that the mileage records were not collected, assembled, or maintained pursuant to any law or ordinance, or in connection with the transaction of official business. Therefore, we agree that the records are not public information and are not subject to disclosure under the Act.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/seg

Ref: ID# 231214

Enc. Submitted documents

c: Ms. Suzette Christopher  
4800 Holiday Lane  
North Richland Hills, Texas 76180  
(w/o enclosures)